

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

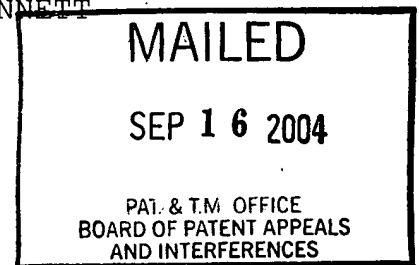
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID LIU and DAVID C. BENNETT

Appeal No. 2004-0318
Application No. 09/329,209

ON BRIEF



Before THOMAS, BLANKENSHIP, and SAADAT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 3, 5 through 10, 12 through 16, 18 through 25 and 27 through 33. Representative claim 1 is reproduced below:

1. A network apparatus comprising:

a management station configured to output a plurality of commands to a plurality of managed devices for stimulating responses from the managed devices,

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wherein the management station is configured to identify responding ones of the managed devices by selectively transmitting subsequent commands that are different from the prior commands.

The following reference is relied on by the examiner:

Kracht	6,377,987	Apr. 23, 2002
		(filed Apr. 30, 1999)

Claims 1 through 3, 5 through 10, 12 through 16, 18 through 25 and 27 through 33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kracht.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions and to the answer for the examiner's positions.

OPINION

Because we conclude that the teachings of Kracht and the examiner's arguments in the answer provide substantial evidence of unpatentability as to substantially all of the claims on appeal, we affirm the rejection of most of them. More specifically, we affirm the rejection of claims 1 through 3, 5 through 10, 12 through 16, 18, 20 through 25 and 27 through 33. As such, we reverse the rejection of dependent claim 19.

From our detailed study of Kracht, we are unpersuaded by appellants' arguments in topic B at pages 6 through 12 of the principal brief on appeal and the more developed responsive arguments in the reply brief at pages 1 through 3 thereof as to the rejection of each independent claim 1, 8, 15, 22 and 31 that is argued with respect to these noted portions of the brief and reply brief. The continuing argument common to each of these claims made at these portions of the brief and reply brief is that Kracht fails to disclose transmitting subsequent commands that are different from the prior commands.

We disagree completely with this view. The discovery mechanism of Kracht is initially disclosed to have three phases at column 6, lines 19 through 23. Each of these respective phrases is discussed in subsequent portions of this reference and each of the respective phases has subparts which are specifically discussed as well. From our review and study of these portions it appears that the substance of the first and second phases relates to this issue beginning with the user's discussion at column 6, line 25 through column 11, line 14. At least with respect to the user input discussion at the bottom of column 6, it is noted that the discussion associated with figure 7 beginning at column 14, line 40 relative to the discover button

706 within the user control section 702 clearly indicates that the user may initiate computer process functions or commands for the discovery of relative information of various devices connected to the network environment in Kracht. We agree with the examiner's views that the discussions substantially throughout all of column 7 and the bulk of the discussion at columns 9 and 10 make it clear to the artisan/reader that plural commands are issued where any subsequent command issued after an initial command is clearly "different" as recited in each of the respective independent claims on appeal. The requests or commands sent out from the discovery process of Kracht receives various responses from which subsequent, different commands of a more specific nature, for example, may be issued to derive further data from the respective networks and the devices thereon.

Appellants' most specific argument at pages 2 and 3 of the reply brief relating to the recognition that Kracht teaches his discovery mechanism issuing requests for additional identifying information in the form of configuration information does, in our view, clearly encompass the ability of the reference to send out additional, different instructions. The additionally, different instructions may respectively seek operational configuration

information of any given device. Thus, it does in and of itself further identify the device, notwithstanding appellants' arguments thereagainst. This configuration information includes the nature of the interfaces of each previously identified device as well as unique hardware identifiers associated with them. Thus, to the extent recited in each independent claim on appeal and to the extent argued, Kracht teaches that subsequent commands are different from the prior commands in each of the respective independent claims on appeal.

It is noted that the paragraph bridging columns 10 and 11 make very clear that continual messages are sent from the discovery mechanism of Kracht to the various devices and on the Internet and on its respective network individually to provide ongoing and updating information with respect to the known devices inclusive of perhaps additional or new devices that may be added to it.

In addressing the separate arguments of claim 7, 14, 20 and 30, each reciting essentially the same feature, at pages 13 and 14 of the principal brief on appeal, we are equally unpersuaded by appellants' arguments there. The argued feature with respect to these claims applies to a management command that individually corresponds to a given device type. The topic 3 heading at line

16 of column 10 of Kracht clearly indicates that subsequent commands gather information that is specific to types of known devices, which include routers, switches and hubs according to the example given in the subsequent discussion.

Appellants present arguments as to claims 15, 23 and 33 at pages 14 and 15 of the principal brief and again at page 4 of the reply brief. Independent claim 15 is unique among the independent claims on appeal in that it requires the claimed asset table, which is also identified in dependent claims 23 and 33. The teaching indicating to us the anticipatory nature of Kracht as to this feature is at numerous locations in this reference. Device type or network asset tables are discussed in terms of "data files" at column 7, lines 56 through 67 for existing and potentially new devices to be added to the network. Additional teachings of caching information associated with devices on the network is taught at column 10, line 56 through column 11, line 9. The examiner's reliance on figures 7 and 8 also are clearly dispositive of the subject matter of this claim. Figure 7 shows elements 700 generally which depicts the user interface window of the test program which shows a physical topology in one form of the resulting discovery processing in Kracht, whereas a more specific demonstration of the topology

itself is shown in figure 8. Thus, at least these identified portions in whole or in part clearly indicate the anticipatory nature of the subject matter of the asset table of claims 15, 23 and 33.

We also sustain the rejection of dependent claim 21 to the extent argued at pages 16 and 17 of the principal brief and pages 4 and 5 of the reply brief. Again, figures 7 and 8 clearly present to the viewer a node table to the extent recited in claim 21; these figures show a plurality of node locations for respective managed devices.

As such, we sustain the rejection of dependent claim 21 on appeal.

Lastly, we reverse the rejection of dependent claim 19 as argued at page 16 of the principal brief and pages 4 and 5 of the reply brief. Our study of Kracht leads us to conclude that there is no comparable teaching or showing of the state transition table including a plurality of identifiers as required by this claim on appeal. There is no teaching or showing in any manner in Kracht correlating to the table A presentation at page 14 of the specification as filed, which appears to be the basis of the claimed feature in claim 19. Therefore, we reverse the rejection of this claim.

Page 5 of the reply brief recognizes that the examiner's so-called "rare finding" positions in the final rejection have been indicated at page 10 of the answer as not to be considered a rejection. Moreover, the examiner's citation and discussion at pages 10 and 11 of new prior art that has not been applied is not considered by us to be a violation of due process of law as argued at page 5 of the reply brief since no rejection has been made with respect to any of them. As noted by appellant at this location of the reply brief, In re Hoch, 428 F.2d 1341, 166 USPQ 406 (CCPA 1970) indicates that the examiner must formally set forth a rejection to the extent the references will be considered by us. Correspondingly, we have not considered the teachings and showings of the respectively identified new prior patents at pages 10 and 11 of the answer.


Since appellants have not presented arguments with respect to any other dependent claim other than those we noted here, any arguments with respect to them have therefore been waived; these claims fall with our consideration of their respective independent or parent claims.

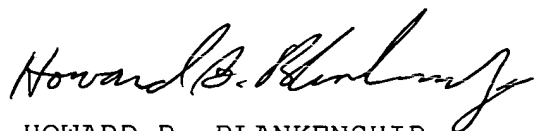
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In view of the foregoing, the decision of the examiner rejecting under 35 U.S.C. § 102 claims 1 through 3, 5 through 10, 12 through 16, 18, 20 through 25 and 27 through 33 is affirmed, but the examiner's position with respect to claim 19 is reversed. Accordingly, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


JAMES D. THOMAS
Administrative Patent Judge)


HOWARD B. BLANKENSHIP
Administrative Patent Judge)


MAHSHID SAADAT
Administrative Patent Judge)

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JDT:hh

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